

§ 1.904(f)-6

26 CFR Ch. I (4-1-04 Edition)

shall be used to recapture the trust's overall foreign loss in accordance with § 1.904(f)-2(d)(4).

(e) *Illustrations.* The provisions of this section are illustrated by the following examples:

Example 1. T, a domestic trust, has a balance of \$2,000 in a general limitation overall foreign loss account on December 31, 1983. For its taxable year ending on December 31, 1984, T has foreign source taxable income subject to the general limitation of \$1,600, all of which it accumulates. Under paragraph (b)(1) of this section, T is required to recapture \$800 in 1984 (the lesser of the overall foreign loss or 50 percent of the foreign source taxable income). This amount is treated as United States source income for purposes of taxing T in 1984 and upon subsequent distribution to T's beneficiaries. At the end of its 1984 taxable year, T has a balance of \$1,200 in its overall foreign loss account.

Example 2. The facts are the same as in example 1. In 1985, T has general limitation foreign source taxable income of \$1,000, which it distributes to its beneficiaries as follows: \$500 to A, \$250 to B, and \$250 to C. Under paragraph (b)(1) of this section, T would have been required to recapture \$500 of its overall foreign loss if it had accumulated all of such income. Therefore, under paragraph (b)(2) of this section, T must allocate \$500 of its overall foreign loss to A, B, and C as follows: \$250 to A ($\$500 \times \$500 / \$1,000$), \$125 to B ($\$500 \times \$250 / \$1,000$), and \$125 to C ($\$500 \times \$250 / \$1,000$). Under paragraph (c) of this section and § 1.904(f)-1(d)(4), A, B, and C must add the amounts of general limitation overall foreign loss allocated to them from T to their overall foreign loss accounts and treat such amounts as overall foreign losses incurred in 1984. A, B, and C must then apply the rules of §§ 1.904(f)-1, 1.904(f)-2, 1.904(f)-3, 1.904(f)-4, and 1.904(f)-6 to recapture their overall foreign losses. T's overall foreign loss account is reduced in accordance with § 1.904(f)-1(e)(1) by the \$500 that is allocated to A, B, and C. At the end of 1985, T's general limitation overall foreign loss account has a balance of \$700.

Example 3. The facts are the same as in example 2, including an overall foreign loss account at the end of 1984 of \$1,200, except that in 1985 T's general limitation foreign source taxable income is \$1,500 instead of \$1,000, and T accumulates the additional \$500. Under paragraph (b)(1) of this section, T would be required to recapture \$750 of its overall foreign loss if it accumulated all of the \$1,500. Under paragraph (b)(3) of this section, T must allocate \$500 of its overall foreign loss to A, B, and C as follows: \$250 to A ($\$750 \times \$500 / \$1,500$) and \$125 each to B and C ($\$750 \times \$250 / \$1,500$). T must also recapture \$250 of its overall foreign loss, which is the amount subject to recapture in 1985 that is not allocated to

the beneficiaries ($\$750 - \$500 = \$250$). Under § 1.904(f)-1(e)(1), T reduces its general limitation overall foreign loss account by \$500. Under § 1.904(f)-1(e)(2), T reduces its general limitation overall foreign loss account by \$250. At the end of 1985 there is a balance in the general limitation overall foreign loss account of \$450 ($(\$1,200 - \$500) - \250).

[T.D. 8153, 52 FR 32002, Aug. 25, 1987; 52 FR 43434, Nov. 12, 1987]

§ 1.904(f)-6 Transitional rule for recapture of FORI and general limitation overall foreign losses incurred in taxable years beginning before January 1, 1983, from foreign source taxable income subject to the general limitation in taxable years beginning after December 31, 1982.

(a) *General rule.* For taxable years beginning after December 31, 1982, foreign source taxable income subject to the general limitation includes foreign oil related income (as defined in section 907(c)(2) prior to its amendment by section 211 of the Tax Equity and Fiscal Responsibility Act of 1982). However, for purposes of recapturing general limitation overall foreign losses incurred in taxable years beginning before January 1, 1983 (pre-1983) out of foreign source taxable income subject to the general limitation in taxable years beginning after December 31, 1982 (post-1982), the taxpayer shall make separate determinations of foreign oil related income and other general limitation income (as if the FORI limitation under "old section 907(b)" (prior to its amendment by section 211 of the Tax Equity and Fiscal Responsibility Act of 1982) were still in effect), and shall apply the rules set forth in this section. The taxpayer shall maintain separate accounts for its pre-1983 FORI limitation overall foreign losses, its pre-1983 general limitation overall foreign losses (or its pre-1983 section 904(d)(1)(A-C) overall foreign losses if such losses were computed on a combined basis), and its post-1982 general limitation overall foreign losses. The taxpayer shall continue to maintain such separate accounts, make such separate determinations, and apply the rules of this section separately to each account until the earlier of—

(1) Such time as the taxpayer's entire pre-1983 FORI limitation overall foreign loss account and pre-1983 general limitation overall foreign loss account

(or, if the taxpayer determined pre-1983 overall foreign losses on a combined basis, the section 904(d)(1)(A-C) account) have been recaptured, or

(2) The end of the taxpayer's 8th post-1982 taxable year, at which time the taxpayer shall add any remaining balance in its pre-1983 FORI limitation account and pre-1983 general limitation overall foreign loss account (or the section 904(d)(1)(A-C) account) to its post-1982 general limitation overall foreign loss account.

(b) *Recapture of pre-1983 FORI and general limitation overall foreign losses from post-1982 income.* A taxpayer having a balance in its pre-1983 FORI limitation overall foreign loss account or its pre-1983 general limitation overall foreign loss account (or its pre-1983 section 904(d)(1)(A-C) account) in a post-1982 taxable year shall recapture such overall foreign loss as follows:

(1) *Recapture from income subject to the same limitation.* The taxpayer shall first apply the rules of §§ 1.904(f)-1 through 1.904(f)-5 to the taxpayer's separately determined foreign oil related income to recapture the pre-1983 FORI limitation overall foreign loss account, and shall apply such rules to the taxpayer's separately determined general limitation income (exclusive of foreign oil related income) to recapture the pre-1983 general limitation overall foreign loss account (or the section 904(d)(1)(A-C) overall foreign loss account). Rules for determining the recapture of the pre-1983 section 904 (d)(1)(A-C) losses are contained in § 1.904(f)-2(c)(4).

(2) *Recapture from income subject to the other limitation.* The taxpayer shall next apply the rules of §§ 1.904(f)-1 through 1.904(f)-5 to the taxpayer's separately determined foreign oil related income to recapture the pre-1983 general limitation overall foreign loss account (or the section 904(d)(1)(A-C) overall foreign loss account) and shall apply such rules to the taxpayer's separately determined general limitation income to recapture foreign oil related losses to the extent that—

(i) The amount recaptured from such separately determined income under paragraph (b)(1) of this section is less than 50 percent (or such larger percentage as the taxpayer elects) of such separately determined income, and

(ii) The amount recaptured from such separately determined income under this paragraph (b)(2) does not exceed an amount equal to 12½ percent of the balance in the taxpayer's pre-1983 FORI limitation overall foreign loss account or the pre-1983 general limitation overall foreign loss account (or the section 904(d)(1)(A-C) overall foreign loss account) at the beginning of the taxpayer's first post-1982 taxable year, multiplied by the number of post-1982 taxable years (including the year to which this rule is being applied) which have elapsed, less the amount (if any) recaptured in prior post-1982 taxable years under this paragraph (b)(2) from such separately determined income.

The taxpayer may elect to recapture a pre-1983 overall foreign loss from post-1982 income subject to the general limitation at a faster rate than is required by this paragraph (b)(2). This election shall be made in the same manner as an election to recapture more than 50 percent of the income subject to recapture under section 904(f)(1), as provided in § 1.904(f)-2(c)(2).

(c) *Coordination of recapture of pre-1983 and post-1982 overall foreign losses.* A taxpayer incurring a general limitation overall foreign loss in any post-1982 taxable year in which the taxpayer has a balance in a pre-1983 FORI limitation or its pre-1983 general limitation overall foreign loss account (or the section 904(d)(1)(A-C) overall foreign loss account) shall establish a separate overall foreign loss account for such loss. The taxpayer shall recapture its overall foreign losses in succeeding taxable years by first applying the rules of this section to recapture its pre-1983 overall foreign losses, and then applying the rules of §§ 1.904(f)-1 through 1.904(f)-5 to recapture its post-1982 general limitation overall foreign loss. A post-1982 general limitation overall foreign loss is required to be recaptured only to the extent that the amount of foreign source taxable income recharacterized under paragraph (b) of this section is less than 50 percent of the taxpayer's total general limitation foreign source taxable income (including foreign oil related income) for such taxable year (except as required by section 904(f)(3)). However,

a taxpayer may elect to recapture at a faster rate.

(d) *Illustrations.* The provisions of this section are illustrated by the following examples:

Example 1. X Corporation is a domestic corporation which has the calendar year as its taxable year. On December 31, 1982, X has a balance of \$1,000 in its section 904(d)(1)(A-C) overall foreign loss account. X does not have a balance in a FORI limitation overall foreign loss account. For 1983, X has income of \$1,200, which was subject to the general limitation and includes foreign oil related income of \$1,000 and other general limitation income of \$200. In 1983, X is required to recapture \$225 of its pre-1983 section 904(d)(1)(A-C) overall foreign loss account computed as follows:

Amount recaptured under paragraph (b)(1) of this section.....\$100

The amount recaptured from general limitation income exclusive of foreign oil related income is the lesser of \$1,000 (the pre-1983 loss reflected in the section 904(d)(1)(A-C) overall foreign loss account) or 50 percent of \$200 (the separately determined general limitation income (exclusive of foreign oil related income)).

Amount recaptured under paragraph (b)(2) of this section.....\$125

The amount recaptured from foreign oil related income is the lesser of \$900 (the remaining pre-1983 section 904(d)(1)(A-C) overall foreign loss account after recapture under paragraph (b)(1) of this section) or 50 percent of \$1,000 (the separately determined foreign oil related income), but as limited by paragraph (b)(2)(ii) of this section to (12½ percent of \$1,000×1) – \$0, which is \$125.

Total amount recaptured in 1983\$225

Example 2. The facts are the same as in example 1, except that X has general limitation income of \$50 for 1984 and \$600 for 1985, all of which is foreign oil related income. X is required to recapture \$25 in 1984 and \$225 in 1985 of its pre-1983 section 904(d)(1)(A-C) overall foreign loss account computed as follows:

Amount recaptured under paragraph (b)(2) of this section in 1984\$25

The amount recaptured from foreign oil related income is the lesser of \$775 (the remaining pre-1983 section 904(d)(1)(A-C) overall foreign loss account or 50 percent of \$50 (the separately determined foreign oil related income). This amount is within the limitation of paragraph (b)(2)(ii) of this section, (12½ percent of \$1,000×2) – \$125, which is \$125.

Amount recaptured under paragraph (b)(2) of this section in 1985.....\$225

The amount recaptured from foreign oil related income is the lesser of \$750 (the re-

maining pre-1983 section 904(d)(1)(A-C) overall foreign loss account) or 50 percent of \$600 (the separately determined foreign oil related income), but as limited by paragraph (b)(2)(ii) of this section to (12½ percent of \$1,000×3) – (\$125+\$25), which is \$225. (\$125 is the amount recaptured in 1983 under paragraph (b)(2) of this section, and \$25 is the amount recaptured in 1984 under paragraph (b)(2) of this section.)

Example 3. Y Corporation is a domestic corporation which has the calendar year as its taxable year. On December 31, 1982, Y has a balance of \$400 in its section 904(d)(1)(A-C) overall foreign loss account. Y does not have a balance in a FORI overall foreign loss account. For 1983, Y has a general limitation overall foreign loss of \$200. For 1984, Y has general limitation income of \$1,200, all of which is foreign oil related income. In 1984, Y is required to recapture a total of \$300 computed as follows:

Amount of pre-1983 overall foreign loss recaptured under paragraph (b)(2) of this section.....\$100

The amount of the pre-1983 section 904(d)(1)(A-C) overall foreign loss account attributable to a general limitation loss recaptured from foreign oil related income is the lesser of \$400 (the loss) or 50 percent of \$1,200 (the separately determined foreign oil related income), but as limited by paragraph (b)(2)(ii) of this section to (12½ percent of \$400×2) – \$0, which is \$100.

Amount of post-1982 overall foreign loss recaptured under paragraph (c) of this section.....\$200

The amount of post-1982 general limitation overall foreign loss recaptured is the amount computed under § 1.904 (f)-2(c)(1), which is the lesser of \$200 (the post-1982 loss) or 50 percent of \$1,200 (the income), but only to the extent that the amount of pre-1983 loss recaptured under paragraph (b) of this section is less than 50 percent of such income ((50 percent of \$1,200) – \$100 recaptured under paragraph (b) = \$500).

Total amount recaptured in 1984\$300

At the end of 1984, Y has a balance in its pre-1983 section 904(d)(1)(A-C) overall foreign loss account of \$300, and has reduced its post-1982 general limitation overall foreign loss account to zero.

Example 4. Z is a domestic corporation which has the calendar year as its taxable year. On December 31, 1982, Z has a balance of \$400 in its section 904 (d)(1)(A-C) overall foreign loss account, and a balance of \$1,000 in its FORI limitation overall foreign loss account. For 1983, Z has general limitation income of \$2,000, which includes foreign oil related income of \$1,000 and other general limitation income of \$1,000. Keeping these

amounts separate for purposes of this section, Z is required to recapture a total of \$1,000 in 1983, computed as follows:

Amount recaptured under paragraph

(b)(1) of this section.....\$900

The amount of pre-1983 section 904(d)(1)(A-C) overall foreign loss account recaptured from general limitation income exclusive of foreign oil related income, in accordance with § 1.904(f)-2(c)(1), is the lesser of \$400 (the section 904(d)(1)(A-C) overall foreign loss) or 50 percent of \$1,000, the general limitation income exclusive of foreign oil related income, which is \$400.

The amount of pre-1983 FORI overall foreign loss recaptured from foreign oil related income, in accordance with § 1.904(f)-2(c)(1), is the lesser of \$1,000 (the FORI overall foreign loss) or 50 percent of \$1,000 (the foreign oil related income), which is \$500.

Amount recaptured under paragraph

(b)(2) of this section.....\$100

The amount of pre-1983 FORI 907(b) overall foreign loss recaptured from section general limitation income exclusive of foreign oil related income is the lesser of \$500 (the remaining balance in that loss account) or 50 percent of \$1,000 (the general limitation income exclusive of foreign oil related income), but only to the extent that the amount recaptured from such income under paragraph (b)(1) of this section is less than 50 percent of such income, or \$100 (50 percent of \$1,000)—\$400 recaptured due to section 904(d)(1)(A-C) overall foreign loss account, and only up to the amount permitted by paragraph (b)(2)(ii) of this section, which is $(12\frac{1}{2}\text{ percent of } \$1,000 \times 1) - \$0$, or \$125.

Total amount recaptured in 1983.....\$1,000

At the end of 1983, Z has reduced its pre-1983 section 904(d)(1)(A-C) overall foreign loss account to zero, and has a balance in its pre-1983 FORI overall foreign loss account of \$400.

[T.D. 8153, 52 FR 32003, Aug. 25, 1987; 52 FR 43434, Nov. 12, 1987]

§§ 1.904(f)-7—1.904(f)-11 [Reserved]

§ 1.904(f)-12 Transition rules.

(a) *Recapture in years beginning after December 31, 1986, of overall foreign losses incurred in taxable years beginning before January 1, 1987*—(1) *In general.* If a taxpayer has a balance in an overall foreign loss account at the end of its last taxable year beginning before January 1, 1987 (pre-effective date years), the amount of that balance shall be recaptured in subsequent years by re-characterizing income received in the income category described in section 904(d) as in effect for taxable years be-

ginning after December 31, 1986 (post-effective date years), that is analogous to the income category for which the overall foreign loss account was established, as follows:

(i) Interest income as defined in section 904(d)(1)(A) as in effect for pre-effective date taxable years is analogous to passive income as defined in section 904(d)(1)(A) as in effect for post-effective date years;

(ii) Dividends from a DISC or former DISC as defined in section 904(d)(1)(B) as in effect for pre-effective date taxable years is analogous to dividends from a DISC or former DISC as defined in section 904(d)(1)(F) as in effect for post-effective date taxable years;

(iii) Taxable income attributable to foreign trade income as defined in section 904(d)(1)(C) as in effect for pre-effective date taxable years is analogous to taxable income attributable to foreign trade income as defined in section 904(d)(1)(G) as in effect for post-effective date years;

(iv) Distributions from a FSC (or former FSC) as defined in section 904(d)(1)(D) as in effect for pre-effective date taxable years is analogous to distributions from a FSC (or former FSC) as defined in section 904(d)(1)(H) as in effect for post-effective date taxable years;

(v) For general limitation income as described in section 904(d)(1)(E) as in effect for pre-effective date taxable years, see the special rule in paragraph (a)(2) of this section.

(2) *Rule for general limitation losses*—(i) *In general.* Overall foreign losses incurred in the general limitation category of section 904(d)(1)(E), as in effect for pre-effective date taxable years, that are recaptured in post-effective date taxable years shall be recaptured from the taxpayer's general limitation income, financial services income, shipping income, and dividends from each noncontrolled section 902 corporation. If the sum of the taxpayer's general limitation income, financial services income, shipping income and dividends from each noncontrolled section 902 corporation for a taxable year subject to recapture exceeds the overall foreign loss to be recaptured, then the amount of each type of separate limitation income that will